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February 26, 2021

The Honorable Charlotte A. Burrows
Chair
U.S. Equal Employment Opportunity Commission
131 M Street, NE
Washington, DC 20507

RE: Termination of Mediation and Conciliation Pilot Programs

Dear Chair Burrows:

We write regarding your recent actions to terminate the U.S. Equal Employment Opportunity Commission's (EEOC) mediation and conciliation pilot programs. These pilot programs were launched in July 2020 and were recently renewed, with the mediation pilot extended through September 30, 2021. We are concerned that your first actions as EEOC Chair were to discontinue these successful pilot programs with little explanation or justification.¹ We urge you to reconsider your hasty decisions to terminate these programs and are requesting additional information about your actions.

Mediation and conciliation are vitally important functions of EEOC that lead to just and timely resolutions of cases for workers and employers before cases go through costly litigation. The mediation program has been fully operational since 1999, and conciliation is a longstanding statutory requirement.² Since 1999, EEOC has engaged in more than 240,000 mediations, resolved over 170,000 discrimination charges filed, and recovered \$3 billion for workers.³ In Fiscal Year 2019, EEOC staff successfully mediated over 6,000 cases that secured \$159.6 million for workers, and the satisfaction rate for the private sector mediation program was an impressive 96.8 percent. In that same fiscal year, EEOC resolved over 110 systemic

¹ Press Release, EEOC Concludes Conciliation and Mediation Pilots (Jan. 27, 2021); Press Release, EEOC Announces Extension of Act Mediation Pilot (Jan. 6, 2021); Press Release, EEOC Announces Pilot Programs to Increase Voluntary Resolutions (July 7, 2020).

² EEOC, History of the EEOC Mediation Program, <https://www.eeoc.gov/history-eeoc-mediation-program>; 42 U.S.C. § 2000e-5(a).

³ Press Release, EEOC Concludes Conciliation and Mediation Pilots (Jan. 27, 2021).

investigations through voluntary conciliation agreements, a small subset of discrimination charges that were resolved through conciliation.⁴

The mediation pilot program, or “ACT (Access, Categories, Time) Mediation pilot,” was intended to enhance EEOC’s already successful mediation program by expanding the categories of discrimination charges eligible for mediation and allowing mediation throughout investigations. The ACT Mediation pilot additionally expanded the use of virtual mediations, and EEOC received positive feedback on the pilot.⁵ The conciliation pilot was intended to build on a renewed commitment to communication between EEOC and the parties, increase internal accountability, and improve existing practices by adding a requirement that the appropriate level of agency management approve offers before they are communicated to employers.⁶

In your January 27 statement, you indicated EEOC would incorporate some of the useful practices from the ACT Mediation pilot. To understand the complete context of the terminations of the ACT Mediation pilot and the conciliation pilot, please respond to the following requests for information by March 12, 2021:

1. Provide the reasons for your decisions to terminate the ACT Mediation pilot and the conciliation pilot, including input, sources, and information you relied on in making the decisions.
2. What practices from the ACT Mediation pilot will be incorporated and will not be incorporated in EEOC’s mediation program, and what practices from the conciliation pilot will be incorporated and will not be incorporated in the agency’s conciliation program?
3. Since the launch of the ACT Mediation pilot and the conciliation pilot last year, what positive or negative feedback did you receive from EEOC’s Chief Operating Officer, other career agency staff, participants in the pilots, and agency mediators regarding how each pilot was working? Did EEOC’s Chief Operating Officer and other agency career staff support the continuation of the ACT Mediation pilot and the conciliation pilot?
4. Did anyone from the Biden-Harris Transition Team or the Biden administration suggest, recommend, or direct that you terminate the ACT Mediation pilot or the conciliation pilot? If so, provide the names of the individuals who made these communications and the dates on which the communications were made.

We look forward to your responses to our requests for information.

⁴ EEOC, FISCAL YEAR 2021 CONGRESSIONAL BUDGET JUSTIFICATION (Feb. 2020).

⁵ Press Release, EEOC Announces Extension of Act Mediation Pilot (Jan. 6, 2021).

⁶ Press Release, EEOC Announces Pilot Programs to Increase Voluntary Resolutions (July 7, 2020).

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Respectfully submitted,

A handwritten signature in blue ink that reads "Virginia Foxx".

Rep. Virginia Foxx
Ranking Member

A handwritten signature in blue ink that reads "Russ Fulcher".

Rep. Russ Fulcher
Ranking Member
Subcommittee on Civil Rights and Human
Services

CC: The Honorable Jocelyn Samuels, Vice Chair
The Honorable Janet Dhillon, Commissioner
The Honorable Keith E. Sonderling, Commissioner
The Honorable Andrea R. Lucas, Commissioner